

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH
DISTRICT JUDGE
(Chambers Conference)

APPEARANCES:

FOR THE GOVERNMENT: JOHN P. McADAMS, AUSA
and STEPHEN DAMBRUCH, AUSA
U.S. Attorney's Office
50 Kennedy Plaza
Providence, RI 02903

FOR THE DEFENDANT
Joseph Caramadre: RANDY OLEN, ESQ.
Olen Law Office
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Court Reporter: Anne M. Clayton, RPR
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1 THE COURT: This is the matter of the United
2 States versus Joseph Caramadre, and we have had an
3 extensive conference in chambers regarding some
4 disagreements among counsel, counsel for Mr. Caramadre
5 and counsel for Attorneys Traini and Lepizzera, with
6 respect to the document production that had been
7 previously ordered by the Court in the order issued on
8 April 12th, 2013, and discussed with counsel subsequent
9 to the first day of hearing in this matter.

10 After listening to counsel and discussing this
11 with them, I'm going to summarize what I understand the
12 current state of production to be and then I'm going to
13 fashion an order of what I want counsel to do prior to
14 the continuation of the hearing on Monday.

15 First of all, my understanding of the status of
16 the document production thus far is that Attorneys
17 Traini and Lepizzera have turned over to Mr. Olen what
18 has been characterized as "the file," the attorneys'
19 file of the case with the exception of certain
20 documents which they believe fall into the attorney
21 work product category. That file consists of
22 approximately 460,000 pages of documents.

23 In addition, Mr. Gerstein, on behalf of
24 Attorneys Traini and Lepizzera, has provided 373
25 additional pages of materials that may fairly be

characterized as fact work product.

Is that correct, Ed?

MR. GERSTEIN: Yes.

THE COURT: You characterize that as work product?

MR. GERSTEIN: It was about 460.

THE COURT: Then the second production of 76 pages.

MR. OLEN: I think it was 82.

THE COURT: Eighty-two pages, so for a total of 460 pages approximately, plus or minus pages. Those pages were turned over to Mr. Olen and also given to the Government, and Mr. Gerstein and Attorneys Traini and Lepizzera believe they fell within the specific order of disclosure that I issued on April 12th.

Now, there are some additional documents which have not been turned over, and they fall into three categories. There are 15 pages of documents that Mr. Gerstein has brought with him to the conference here today, which he's prepared to turn over subject to an order of the Court to do so. And those documents, I believe, are also attorney work product but Mr. Gerstein suggests that they may also touch upon the areas that were required for disclosure in the April 12th order.

1 The second category are trial notes by Attorneys
2 Lepizzera and Traini, that is notes made about witness
3 testimony during the course of trial. Then the third
4 category is an unspecified number of pages of documents
5 that Attorneys Traini and Lepizzera believe reflect the
6 mental impressions or opinions of counsel in some
7 regard about the case.

8 We've had an extensive discussion about that
9 third category of documents and what I've concluded is
10 that the best way to facilitate resolution of
11 disagreement between counsel about what should be done
12 with that category is to order that those documents be
13 submitted for in camera review, and I will determine
14 whether these documents should be disclosed to Attorney
15 Olen as part of -- and/or the Government as part of the
16 ongoing hearing on the Defendant Caramadre's motion to
17 withdraw his plea.

18 If I determine that these documents do not go to
19 the central issues claimed by Caramadre as the basis
20 for his motion, then I will not require disclosure of
21 any of those documents. If I determine that some of
22 them do, then I'll order disclosure.

23 Mr. Gerstein has indicated that Attorneys Traini
24 and Lepizzera may wish to appeal such an order. We'll
25 cross that bridge if we get to it. They could request

1 a stay of the hearing and apply for an interlocutory
2 appeal to the Court of Appeals. There's no sense in
3 prejudging what I would do at that point if we get to
4 that point.

5 So I'm going to require that those documents be
6 turned over to me for in camera inspection by four
7 o'clock today and the obligation to assemble additional
8 documents, if any exist that fall into that category,
9 will be ongoing. So if additional documents are
10 discovered, counsel can supplement the disclosure to
11 me.

12 MR. GERSTEIN: Judge, after I leave here I've
13 got a personal matter in Cambridge that can't be moved.
14 Four o'clock is not going to work for me. Can I make
15 delivery to you by, say, nine or ten o'clock tomorrow
16 morning?

17 THE COURT: Can't Tony and Mike get all this
18 together? Isn't it already assembled?

19 MR. GERSTEIN: Well, some of it is. It's a
20 question of how do we get it, you know, electronically
21 to you I guess through Ryan. I know that Tony and Mike
22 were both in state court today. I don't know what
23 their afternoon schedules are or when I'll be able to
24 reach them. Certain documents I have and once I get
25 back from Cambridge, I can shoot them by e-mail to Ryan

1 or directly to you if I have your e-mail address. I'm
2 just saying the four o'clock deadline is going to be
3 very problematic.

4 THE COURT: All right. Nine o'clock tomorrow
5 morning.

6 MR. GERSTEIN: That's fine. Do you want them
7 sent to you or sent to Ryan?

8 THE COURT: If you're sending them in electronic
9 form, send them to Ryan. He can get them up here.

10 Unless you're prepared to turn those 15 pages of
11 documents over right now to Mr. Olen. Are you? Is
12 that what I understand?

13 MR. GERSTEIN: I'd like to hand them over to
14 both right now and give you a copy also.

15 THE COURT: Those will be turned over today at
16 this conference. I'll take a copy and a copy will go
17 to both the Government and Mr. Olen.

18 Then finally, I'm going to order that the trial
19 notes of Mr. Traini and Lepizzera be turned over to
20 Mr. Olen. So those can be copied and turned over.

21 MR. GERSTEIN: That's just to Mr. Olen, not also
22 to the Government?

23 MR. OLEN: I don't know if this is the right
24 time to ask to be heard on this.

25 THE COURT: You can address that trial note

1 issue if you want.

2 MR. OLEN: I think we have a fundamental
3 disagreement, Mr. Gerstein and I, as to the scope of
4 disclosure. What Mr. Caramadre is entitled to because
5 it's his file is not co-extensive with what the Court
6 has already ordered the Government is entitled to.
7 That order was made in the context of what we had
8 argued rebutting the Rules of 1.6, Professional
9 Responsibility. And the scope of that disclosure was
10 much, much more narrow than what the Government has
11 requested. These are materials that Mr. Caramadre is
12 entitled to, certainly, because it's his file. But the
13 disclosure should not be also made to the Government if
14 it is outside the scope of the Government's --

15 THE COURT: I'm not sure the Government wants
16 his trial notes.

17 Do you want them?

18 MR. McADAMS: Doesn't matter.

19 THE COURT: So Mr. McAdams isn't asking for the
20 trial notes.

21 MR. OLEN: That's fine. I would make the same
22 statement with regard to your original order as to what
23 Mr. Gerstein -- I forget exactly what it was you said
24 to the Government and myself.

25 THE COURT: There's the 15 pages of documents.

1 MR. OLEN: Right. Why would the Government get
2 them?

3 THE COURT: I understood those documents to be
4 with -- I thought Mr. Gerstein was saying they're
5 within the scope of the April 12th order.

6 MR. GERSTEIN: I believe that they are, your
7 Honor. Also, we're beyond the point of, you know, Rule
8 1.6(b)(2) allows even if it's extra-judicial, which I
9 don't consider this to be an extra-judicial
10 environment, allows my clients to make reasonably
11 necessary disclosures to defend themselves. Quite
12 frankly, if I wanted to take a broad reading of both
13 your decision and rule, I could have sat down with John
14 McAdams at any time I wanted to and said, "John, let me
15 give you some facts straight up about what these guys
16 will testify to, what you should ask them." I think
17 that would have been fair game under 1.6(b)(2).

18 MR. OLEN: Contrary to the Court's order.

19 MR. GERSTEIN: What I'm saying is the documents
20 I have today I think are germane and responsive to the
21 Court's order and in terms of the last conference.

22 THE COURT: So I'm going to just reiterate,
23 those 15 pages of documents, those are within the scope
24 of the April 12 order, those will be turned over both
25 to Mr. Olen, the Government, copy to myself today.

1 Trial notes turned over to Mr. Olen because Mr. McAdams
2 says the Government doesn't want them. That's fine.

3 The rest of the materials will be submitted for
4 in camera review by nine o'clock tomorrow morning with
5 an ongoing obligation to search for any additional
6 documents that may exist.

7 And I just want to be clear about one thing.

8 The ongoing obligation of Traini and Lepizzera
9 consistent with the Rules of Professional
10 Responsibility require that the entire file be turned
11 over to Mr. Olen except subject to this process, except
12 documents that are work product. So if there are
13 documents that are located someplace else, if they're
14 at home or they're on a computer somewhere or whatever,
15 their obligation is to turn it over unless they're work
16 product. If they're work product, they should fall
17 into this last category I talked about. There
18 shouldn't be anything else that's out there and that
19 are not subject to this order. Okay? I think that's
20 where we are. That's what I'm ordering.

21 Does anybody else have to put anything on the
22 record?

23 MR. GERSTEIN: I'd like to put this on the
24 record. I'm handing over to Mr. McAdams and Randy the
25 15 pages. I want to point out that on page number 466

1 there are two redactions. And before everyone gets
2 excited, those redactions have to do with a medical
3 appointment for Mr. Traini and I just didn't think that
4 they were appropriately responsive or necessary to
5 include --

6 THE COURT: That's fine.

7 MR. GERSTEIN: Now, the next issue, Judge, since
8 we've made so much congenial progress this morning --

9 THE COURT: Do we need this to be on the record?

10 MR. GERSTEIN: No, I don't think we do.

11 MR. OLEN: Judge, I want to put on the record
12 somewhat of an objection of what the Court has decided
13 to do. I think the better approach would be to allow
14 us to view the file under a protective order. I
15 appreciate you qualifying what I guess is a category
16 four. I just want to make sure I understand what you
17 just said about any other materials, means that the
18 attorneys, Mr. Gerstein, have to produce essentially
19 what's in the file either to you in camera for your
20 inspection if they're claiming work product or to
21 Mr. Caramadre. Because what I heard Mr. Gerstein to
22 say earlier is what he enumerated for you is what they
23 think is work product does not constitute the entire
24 file. If there is another part of the file, it would
25 make this order completely --

1 THE COURT: I think I've been really clear. I
2 don't know that I could be any clearer with respect to
3 what is required.

4 MR. OLEN: Do you understand the point I'm
5 trying to make?

6 THE COURT: I understand.

7 MR. OLEN: If there's something else there, it
8 has to go to you in camera or it has to come to me.

9 THE COURT: That's what I just said.

10 Anything else?

11 Let's go off the record.

12 (Discussion off the record.)

13 (Chamber conference concluded at 11:20 a.m.)

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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

April 7, 2014

Date